

Catherick Birkbeck, and Edward his Son, } Gilbert Spearman, and Margaret his Wife,
and William Wilkinson, Appellants } RESPONDENTS.

The Respondents CASE.

The Point in both Causes is the same, viz. Whether by the Settlement made in 1670. the two Daughters of Robert Peirson and Mary his Wife be Tenants in Common or Jointenants for Life with several Inheritances.

June 7, and 8,
1670.

ROBERT PEIRSON, having married Mary, the Sister of the late Lord Cullen; the said Lord Cullen, in Consideration of 1200*l.* part of her Fortune by Lease and Release, dated June 7, and 8, 1670. conveys the Rectory and Church impropriate of Bishop Middleham, in the County of Durham, and all the Tithes of Corn and Grain in Bishop Middleham aforesaid, to these Uses, viz. As to the Tithes of Corn and Grain aforesaid, to the use of Robert Peirson for Life; and as to all the rest of the said Premises, to the use of Trustees, during the Life of the said Mary Peirson, in trust for her sole and separate Benefit; and after the Decease of the said Robert Peirson, and Mary respectively, and upon failure of Issue Male of their Bodies, "To the use of all and every the Daughter and Daughters of the Body of the said Robert Peirson on the Body of the said Mary, lawfully begotten, or to be begotten, and the Heirs of their respective Bodies lawfully issuing, Remainder to the use of the said Mary, and her right Heirs forever.

Robert Peirson, and Mary his Wife, are both Dead, leaving Issue only two Daughters, viz. Mary, the Wife of the Appellant Catherick, and Mother of the Appellant Edward, who dyed in 1693. and the Respondent Margaret.

By this Settlement, the said two Daughters were Joint-tenants for Life with several Inheritances, so that upon the Death of Mary the Wife of the Appellant Catherick, the whole Premises came to the Respondent Margaret, by Survivorship, Remainder after her Death, as to one Moyety to Appellant Edward; and as to the other Moyety, to the Heirs of Respondent Margaret.

Upon hearing of this Cause, the Council against the Respondents insisting, That the said Respondent Margaret and her Sister were Tenants in common, and not Joint-tenants of the said Premises; and therefore, that the said Respondent was not intitled to the same Premises for her Life. The late Lord Keeper declared, That he was fully satisfied, that the Respondent, and her said Sister, were Joint-tenants; but however, for their Satisfaction in that Point, he would take the Opinion of all the Judges of the Queen's Bench; and accordingly a Case was made, and sent by the late Lord Keeper to the Lord Chief Justice, and the rest of the Judges of that Court, who all unanimously certified the late Lord Keeper, in Writing under their Hands, That the Respondent Margaret and her Sister were Joint-tenants; and thereby the said Respondent Margaret was intitled to the whole Premises during her Life: And thereupon afterwards, the late Lord Keeper again declared, That he was very clear in the Law as to that Point, and Decemb. 18, 1704. decreed the same accordingly.

Decemb. 18.
1704.

*Note, As to the Appeal brought in the Name of Catherick Birkbeck, and his Son, they are not at all concern'd in point of Interest in the Question; for as to the Appellant Catherick if his Wife was Tenant in common only, and not Joint-tenant with her Sister (as he contends for by his Appeal) then was he Tenant by the Courtesy of England, and will be thereby intitled to his Wife's Moyety for his Life; and he has not only mortgaged his Life Estate in that Moyety to Appellant Wilkinson, for more than it is worth, viz. for 770*l.* when the Purchase of the Inheritance of the whole Rectory cost only 1200*l.* but has therein covenanted, that the Respondent Margaret, and all claiming Right and Title to the Premises, should join in the Conveyance, which he can never procure to be done.*

And as to the Appellant Edward, the Matter now in Question no farther concerns him, than whether he shall have a Moyety of this Estate, after the Death of his Father, or after the Death of his Aunt the Respondent, Mrs. Spearman.

And as to Wilkinson, he had Notice of the Settlement before his first Mortgage.

The Respondent Spearman having, at his great Charge and Expence, retrieved this Estate out of the Hands of Wilkinson, who has been in Possession of it for the most part of Twenty Years past; and which if he had not done, the two Daughters and their Children would not in all likelihood have been better for it: And the Decree in the Point appealed and complain'd of, being founded on the unanimous Opinion of the late Lord Keeper, and all the Four Judges of the Queen's Bench, in a known point of Law, The Respondents hope, That Your Lordships will affirm the Decree, and dismiss the Appeals with Costs.

Sam. Dodd